

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
CORTY VAN DYK & SONS )  
DAIRY, INC., )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB No. 887

FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$1,000 civil penalty for  
alleged discharge of animal wastes into waters of the state;  
having come on regularly for formal hearing before the Pollution  
Control Hearings Board on the 28th day of August, 1975, at Lacey,  
Washington; and appellant Corty Van Dyk & Sons Dairy, Inc. appearing  
through its attorney, Bryce Dille and respondent State Department of  
Ecology appearing through its attorney, Joseph J. McGoran, assistant  
attorney general; and Board members present at the hearing being  
Chris Smith, Walt Woodward and W. A. Gissberg and the Board having

1 considered the sworn testimony, exhibits, records and files herein  
2 and having entered on the 15th day of September, 1975, its  
3 proposed Findings of Fact, Conclusions of Law and Order, and  
4 the Board having served said proposed Findings, Conclusions and  
5 Order upon all parties herein by certified mail, return receipt  
6 requested and twenty days having elapsed from said service; and

7 The Board having received no exceptions to said proposed  
8 Findings, Conclusions and Order; and the Board being fully advised  
9 in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 15th  
12 day of September, 1975, and incorporated by this reference herein  
13 and attached hereto as Exhibit A, are adopted and hereby entered  
14 as the Board's Final Findings of Fact, Conclusions of Law and Order  
15 herein.

16 DONE at Lacey, Washington, this 17<sup>th</sup> day of October, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

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20 CHRIS SMITH, Chairman

21   
22 WALT WOODWARD, Member

23   
24 W. A. GISSBERG, Member  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 17<sup>th</sup> day of October, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Bryce H. Dille  
Campbell, Dille, Barnett & McCarthy  
319 South Meridian  
Puyallup, Washington 98371

Mr. Joseph J. McGoran  
Assistant Attorney General  
Department of Ecology  
St. Martin's College  
Olympia, Washington 98504

Mr. Lloyd Taylor  
Department of Ecology  
St. Martin's College  
Olympia, Washington 98504

Corty Van Dyk & Sons Dairy, Inc.  
10729 Angeline Road  
Sumner, Washington 98390

  
LARENE BARLIN  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CORTY VAN DYK & SONS  
DAIRY, INC.,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 887

ORDER

Nature of Case: \$1,000 civil penalty for alleged discharge  
of animal wastes into waters of the state.

Formal Hearing; August 28, 1975, Lacey, Washington.

Board Members Present: Chris Smith, Chairman, Walt Woodward and  
W. A. Gissberg.

Presiding Officer: David Akana, hearings examiner.

Court Reporter: Eugene E. Barker

For appellant: Bryce Dille, of Campbell, Dille, Barnett &  
McCarthy, attorneys.

For respondent: Joseph J. McGoran, assistant attorney general.

EXHIBIT A

FINDINGS OF FACT

I.

1. On April 6, 1975, near Sumner, Washington, appellant Corty Van Dyk Dairy discharged a substantial amount of animal wastes into Fennel Creek. Said discharge occurred as a result of the unexplained failure of a manure slurry pipeline that appellant owned and controlled on or near the affected creek. The waters in the affected creek are public waters of the state.

2. For causing the above described incident, respondent assessed appellant a \$1,000 civil penalty. Respondent's purpose in setting the penalty in this amount, which was considerably higher than appellant's past penalties, was to get the appellant's attention. It has.

3. There was no evidence of fish mortality in Fennel Creek as a result of this incident. However, repeated occurrences of this nature will retard fish repopulation of the creek, which presently contains about fifty percent less fish than it can be expected to support.

CONCLUSIONS OF LAW

1. Appellant discharged a matter which is a pollutant within the meaning of RCW 90.48.020.

2. Appellant unlawfully discharged a pollutant into public waters thereby violating RCW 90.48.080 and for which a civil penalty was properly assessed under RCW 90.48.144. We have construed RCW 90.48.080 as imposing strict liability in several previous cases. E.g., National Can Corporation v. Department of Ecology, PCHB No. 615

ORDER

1 (June 18, 1975); Filan v. Department of Ecology, PCHB No. 449  
2 (May 7, 1974).

3 3. The penalty assessed is reasonable in amount.

4 ORDER

5 The \$1,000 civil penalty is affirmed. However, the attention of  
6 appellant having been secured, \$500 of said penalty is suspended on  
7 condition that appellant incur no further sustained violation under  
8 chapter 90.48 RCW for six months from the date that this order  
9 becomes final and effective.

10 DATED this 15th day of September, 1975.

11 POLLUTION CONTROL HEARINGS BOARD

12  
13 Chris Smith  
CHRIS SMITH, Chairman

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15 W. A. Gissberg  
16 W. A. GISSBERG, Member

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18 Walt Woodward  
19 WALT WOODWARD, Member

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27 ORDER